asylum to other than political fugitives, nor does the refugee, in the eyes of the pursuing power, acquire any legal immunity by his escape beyond the borders. If kidnapped and returned for trial a protest that he was brought within the jurisdiction irregularly is of no avail. Nevertheless the right of a state to demand extradition rests solelyon treaty. The treaty however should be interpreted with a viewto the attainment of the object for which it was entered into, and a desire to protect the criminal or invest him with new rights does not figure among these. Hence to emphasize the words "place where found" in the present treaty and construe them as forbidding an arrest in any other district than that in which the hearing is to take place virtually creates a right in favor of the fugitive for which there is no warrant, and, in fact, contravenes the spirit of the agreement. "Place where found" means no more than such place within the territories of either party as may witness the necessary inquiry into the sufficiency of the evidence against the party accused, and not the particular locality where the physical act of capture takes place. The offender against a foreign society acquires no right to local hearing in the state to which he has last run. It is to be borne in mind that the hearing is in no sense a final trial and the sole question is as to the sufficiency of certain evidence. Any duly authorized federal tribunal is competent to protect all the interests the United States has under the treaty. Were the question a new one, then, the construction of the court should be objected to as technical and obstructive to justice. But the principal case undertakes to overthrow a rule generally accepted and acted upon since its enunciation in the case of *Henrich* (1867) 5 Blatchf. 414, to the effect that the warrant in question runs throughout the United States. Moore on Extradition § 304. The most notable discussion of the point was raised in connection with the extradition in 1881 of Giuseppe Randazzo, at which time the matter was brought to the attention of Congress. Sen. Ex. Doc. No. 20, 47th Cong. 1st sess. The Committee on the Judiciary in the Senate reported that under the existing practice the warrant ran throughout the United States, and inasmuch as extradition existed in the United States as a whole, regardless of locality, and not with the states or in reference to any section or district a change in the law was not advisable. Senate Report No. 82, 47th Cong. 1st sess. The arguments advanced by the principal case do not justify a subversion of this settled policy.

IDENTITY OF CAUSES OF ACTION IN RES JUDICATA.—There is a striking vagueness in the language of judges and authors when the principles of res judicata are before them, and particularly when the doctrine is applied to the prosecution of a second suit for the same injury. For example in *Werlein* v. *New Orleans* (1900) 177 U. S. 390, the statement is that "a former judgment between the parties or their privies upon the same cause of action as that stated in the second case constitutes an absolute bar to the prosecution of the second action, not only as to every matter which was offered

and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose"; but the difficulty is to determine when the causes of action are the same. Identity of admissible testimony is the test which has been most widely accepted. Freeman on Judgments § 259, Herman on Res Judicata 96, Black on Judgments, 2nd ed. 726: but this would seem to confine the application of the doctrine in limits too narrow and technical, since by the ingenuity of the pleader the issues raised in the two suits may be made to vary, though each be on the same claim or demand. In a late case in the District Court for Massachusetts, *The New Brunswick* (1903) 125 Fed. 567, the court distinctly rejects this test, and holds that the plaintiff must at his peril so frame his pleadings in the first action as to avail himself of all the evidence necessary to prove his right to recover. This decision seems properly to allow the doctrine a scope denied by the limitations of the rejected rule, but it suggests no test to replace the old one, nor do the solutions of other judges of similar views seem satisfactory. In *Wildman* v. *Wildman* (1898) 70 Conn. 700, the court says a cause of action consists of a right belonging to the plaintiff and some wrongful act or omission done by the defendant; but this would seem to substitute one difficulty for another. The act of the defendant cannot be absolutely a wrongful act, but only as it infringes a right of the plaintiff. It is therefore the rights of the plaintiff which must be examined, rather than the act of the defendant. But the question whether the second suit is for the invasion of the same or a different right necessitates such a definition of a right as to distinguish one from another, and the courts are not only not in accord on a definition, but their decisions are in direct conflict on facts exactly similar. *Reilly* v. *Sicilian Asphalt Pav. Co.* (1902) 170 N. Y. 40; *Brunsden* v. *Humphrey* (1884) L. R. 14 Q. B. D. 141; *Doran* v. *Cohen* (1888) 147 Mass. 342. These were cases where one suit was for the invasion of a right of person and the other for a right of property. Seemingly these classifications of rights are sufficiently distinct to leave no question, and when courts of such recognized standing are found in conflict as to the existence of any distinction even between these rights there would seem to be little hope of making such a distinction between rights of the same class as is required to make the Connecticut definition valuable.

The basic principle of the doctrine is protection from vexatious litigation, and this is supplemented by the idea of juridical economy. Black on Judgments, 2nd ed. 673. The latter element requires the determination of a matter in a single suit where each party may secure his rights in one suit, and the first should impel each party to use all his efforts to secure those rights and be done. Perhaps our adjective law is not sufficiently scientific to deduce a test from it which will invariably solve the difficulty. With the modification, however, that if the second suit presents a claim which could not have been introduced into the first under any appropriate

pleadings, the action should be allowed, *Malloney* v. *Horan* (1872) 49 N. Y. 111, the holding of the Massachusetts court would seem to be more in accord with these underlying ideas than the older rule and to be preferred even though the court has nothing more tangible to offer than the declaration that "the substantial identity of two causes of action differently expressed is deemed within the direct knowledge of the court from the circumstances of the case, without need of canons of distinction." Canons of distinction are surely desirable, though it may be they cannot be phrased. See 1 COLUMBIA LAW REVIEW 133.

NON-LIABILITY OF A NATIONAL BANK AS PARTNER.—Ordinarily the legal owner of stock in a joint stock company is liable as partner in the absence of an exempting statute. Does a national bank which has received stock as collateral and bought it in to protect itself from loss assume such or any liability? An unexpected answer to this question has been given by the Ohio Supreme Court in *Merchants' National Bank* v. *Wehrmann* (1903) 68 N. E. 1004. It was there held that so far as the purchase of the stock involved the assumption of partnership liability it was ultra vires and imposed no such liability; but that the bank became joint owner of the real property of the joint stock company by virtue of its ownership of the shares, and that having taken part in the management of the property through its agents it was liable for a share of the expenses subsequently incurred by the company, proportionate to the amount of stock it held, in this case nine-fortieths of the whole. The court holds, then, that while the bank has no power to assume unlimited liability it has power to assume nine-fortieths of such liability.

The conclusion reached that a bank has no power under any circumstances to enter into a partnership seems sound. To allow the exercise of such power might involve a bank hopelessly and would be contrary to the holding that a bank cannot enter into general business. *Cameron* v. *Bank of Decatur* (Tex. 1896) 34 S. W. 178; *Cockrill* v. *Abeles* (C. C. A. 8th Circ., 1898) 86 Fed. 505. If a bank has no power to assume the liability of a partner, it would seem to follow that it cannot acquire a partner's rights. The purchase of a share represents the entry into a contract between the vendee and the other stockholders involving certain rights and liabilities. If it is beyond the power of the corporation to assume the liabilities of the contract of partnership, it follows that it has no power to enter into the contract at all. The court cannot make a new contract for the parties and say that the corporation acquired the rights but did not assume the obligations incident to becoming a member of a joint stock-company. In *California Bank* v. *Kennedy* (1896) 167 U. S. 362 it was held that where a national bank acquired stock in another bank which by the law of California made the former liable for its proportion of the debts of the latter, the former could not be held as it had no power